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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,442	10/07/2003	Joe K. Wong	23521.00	3683

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EXAMINER

ROWAN, KURT C

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 05/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/679,442

Applicant(s)

WONG, JOE K.

Examiner

Kurt Rowan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 9-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 14-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Fig. 1, Fig. 2, Fig. 3, Fig. 4.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35

U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Dolph Torrence on April 14, 2004 a provisional election was made Fig. 1 with traverse to prosecute the invention of Fig. 1, claims 1-8, 14-17. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crigler in view of Mattes.

The patent to Crigler shows an insect trap having a cup adapted for placement in a cup holder. The cup has a rim and an interior as shown in Fig. 1. Crigler shows a roach bait in Fig. 1. Crigler shows a cover 1, 3 having a lip threaded on to the rim of the cup. Crigler shows the cover 1 having at least one concavity at 3 defined therein and a hole 4 defined in the concavity. The patent to Mattes shows an insect bait station with a cup 5 having a snap-on cover 6 as disclosed in page 1, column 2, lines 88-97. In reference to claim 1, it would have been obvious to provide Crigler with a snap-on cover as shown by Mattes since merely one cover is being substituted for another and the

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function is the same. In reference to claim 2, Crigler shows the cover having an inverted cone shape defining the at least one concavity, but it would have been obvious to employ an inverted dome shape since changes in shape are obvious matters of design choice noting the function is the same. See *In re Dailey et al.*, 149 USPQ 348. In reference to claims 3, 4, Crigler shows cover having a plurality of concentric ripples in Fig. 1 and the individual wires that make up the conical member 3 form a plurality of spiral ridges. In reference to claim 14, Crigler and Mattes do not show an adhesive sticker to seal the hole defined in the cover to prevent insects from escaping when the trap is disposed of. The examiner takes Official Notice that adhesive stickers to close an aperture in the receptacle are old and well known.

In reference to claims 15, 16, Crigler makes the cover from metal and the cup from glass, but it would have been obvious to make the cover from transparent plastic and the cup from plastic since the selection of a known material is based on its suitability for the intended use. See *In re Leshin*, 125 USPQ 416. In reference to claim 17, Mattes shows the cup 5 to be substantially cylindrical.

5. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crigler in view of Mattes as applied to claim 2 above, and further in view of Madonna. The patents to Crigler and Mattes have been discussed above and do not show a flap pivotally attached to the hole. The patent to Madonna shows an insect guard in Fig. 4 having a cover 84 with a living hinge 88. In reference to claim 5, it would have been obvious to provide the insect trap of Crigler as modified by Mattes with a living hinge as shown by Madonna to prevent insects from escaping from the trap once inside.

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6. Claim 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crigler in view of Mattes as applied to claim 2 above, and further in view of Carlsen.

The patents to Crigler, Mattes and Carlsen show insect traps. Crigler and Mattes have been discussed above and do not show an interior of the cup at least partly coated by a sticky substance. The patent to Carlsen shows a sticky substance 15 on the inside of the trap in Fig. 1. in reference to claim 8, it would have been obvious to provide the trap of Crigler as modified by Mattes with an adhesive layer as shown by Carlsen for the purpose of preventing the escape of insects already trapped.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Spragins, Reibling, Plato, Schneidmiller, Wunsche, Sherman, Wunsche, Cardinet, and Rawlings show other traps.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kurt Rowan
Primary Examiner
Art Unit 3643

KR